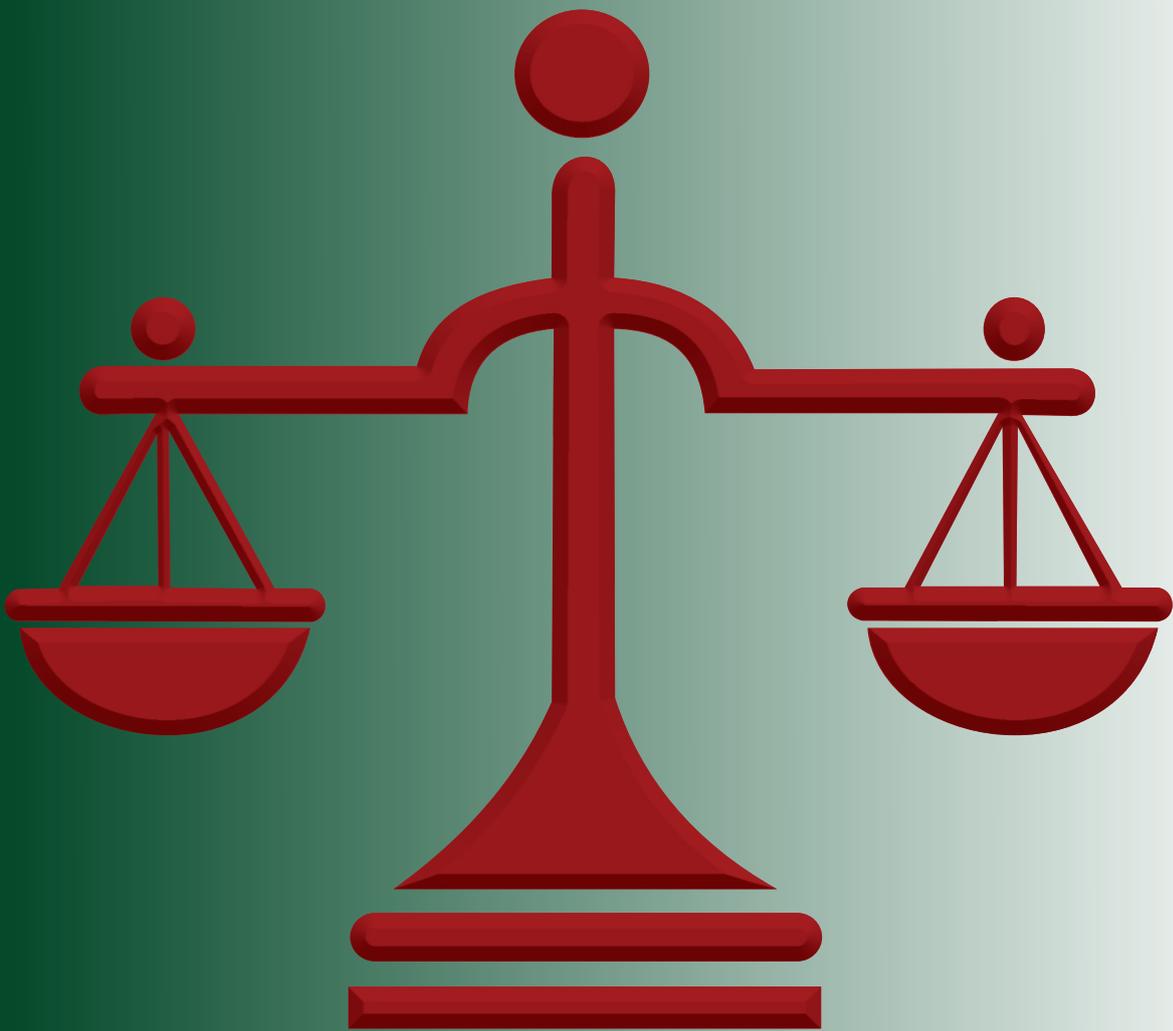


SADC MODEL LAW ON ELECTIONS



SADC PARLIAMENTARY FORUM



SADC MODEL LAW ON ELECTIONS

DECEMBER 2018

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FOREWORD

At a time when there was no guidelines on the conduct and management of elections on the African continent in general and SADC Region in particular, the SADC Parliamentary Forum (SADC PF) was the first organisation on the to develop and adopt the Norms and Standards for Elections in the SADC Region on 25 March 2001.¹ Since the adoption of the Norms and Standards, several other election instruments were adopted by various organisations, including SADC and African Union (AU), which are aimed at strengthening the conduct and management of democratic elections.

These include the SADC Principles and Guidelines for Democratic Elections of 2004 by SADC Summit; SADC Protocol on Gender and Development of 2008 by SADC Summit; Principles for Election Management, Monitoring, and Observation in the SADC Region (PEMMO) of 2003 by Electoral Commissions Forum of SADC (ECF-SADC) and Electoral Institute for Sustainable Democracy in Africa (EISA); the African Union Declaration on the Principles Governing Democratic Elections in Africa of 2002; the African Charter on Democracy, Elections and Governance of 2007 by the African Union; and Benchmarks for Democratic Legislatures in Southern Africa of 2010 by SADC PF.

However, although the development of various election instruments within SADC was a positive step, majority of them are not legally binding, posing challenges of effective domestication.

Specific to the 2004 SADC Principles and Guidelines Governing Democratic Elections, there was no clarity on how non-compliance by Member States would be handled. Furthermore, the document placed no obligation on SADC Member States to invite SADC Election Observation Missions to observe their elections and did not include a long term observation methodology as observers were only allowed two weeks of pre-election deployment, which was obviously not sufficient to cover the electoral cycle. The instrument also did not define concepts such as 'free and fair' and how they were to be measured, leading to contestation and confusion regarding their usage.

In view of the above, the Ministerial Committee of the SADC Organ on Politics, Defence and Security Cooperation (MCO) in 2011, directed the SADC Electoral Advisory Council (SEAC) to review the SADC Principles and Guidelines Governing Democratic Elections. To this end, SEAC undertook a three-year consultative processes from 2012, with all structures of SADC and stakeholders, including SADC PF.

The revised SADC Principles and Guidelines Governing Democratic Elections SADC Principles and Guidelines were adopted by the MCO on 20 July 2015, in Pretoria, South Africa. The review and subsequent adoption of document is a landmark development towards a harmonised and binding election instrument in SADC. While the revised Principles and Guidelines are still a Non-Treaty Standard, they comprehensively address some of the major shortcomings of the 2004 version. These include the procedure for dealing with instances of non-compliance, making it obligatory for Member States to invite the SADC Election Observation Mission, broadening of the composition of SADC Election Observer Missions to include Parliamentarians and non-state actors and the requirement for SADC countries to undertake participatory and inclusive post-election reviews. More fundamentally, it has a stronger link to SADC Treaty and the SADC Protocol on Politics, Defence and Security Cooperation; Protocol on Gender and Development (2008).

The SADC PF applauded the adoption of the revised SADC Principles and Guidelines Governing Democratic Elections and through a resolution by the 39th Plenary Assembly Session, that was held in Ezulwini, Eswatini from 28 May to 7 June 2016, mandated the Standing Committee on Democratisation, Governance and Human Rights, to spearhead the development of the SADC Model Law on Elections. The Model Law was meant to assist SADC Member States in domesticating the electoral principles and obligations stipulated in the SADC Principles and Guidelines and other regional and International Election instruments.

The conclusion of this onerous task with the adoption of the SADC Model Law on Elections by the 45th Plenary Assembly in December 2018 in Maputo is therefore, a milestone in promoting the integrity of elections in the SADC Region.

Electoral stakeholders will find this Model Law useful as it will help them to domesticate regional and international obligations into domestic legislation and policy.



Hon. Wavel Ramkalawan
CHAIRPERSON OF THE STANDING COMMITTEE ON DEMOCRATISATION GOVERNANCE AND HUMAN RIGHTS

¹ Benchmarks for Assessing Democratic Elections in Southern Africa (2013), SADC Parliamentary Forum, Windhoek, Namibia

ACKNOWLEDGEMENTS

This ground-breaking *SADC Model Law on Elections* which was adopted by the SADC Parliamentary Forum (SADC PF)'s 44th Plenary Assembly on 4th December 2018 in Maputo, Mozambique, was developed through a consultative and inclusive process. Its development involved a wide range of stakeholders who rendered various forms of support, including financial, technical and political. A few of the stakeholders deserve special mention: the Standing Committee on Democratisation Governance and Human Rights which spearheaded the development of the Model Law following a resolution by the by the 39th Plenary Assembly mandating it to develop the Model Law to assist Member States to domesticate the revised *SADC Principles and Guidelines Governing Democratic Elections* that was adopted by the SADC Ministerial Committee of the Organ (MCO) on 20 July 2015 in Pretoria, South Africa; the Germany Government through GIZ Regional Programme on Peace and Security; the SADC Organ on Politics Defence and Security Affairs; the SADC Electoral Advisory Council (SEAC) whose mandate includes facilitating and monitoring compliance with the revised SADC Principles and Guidelines; the Electoral Commissions Forum of SADC (ECF-SADC); SADC Council of NGOs (SADC CNGO); SADC Lawyers Association; Electoral Institute for Sustainable Democracy in Africa (EISA); Amnesty International Southern Africa; African Governance Architecture (AGA) of the African Union; United Nations Department of Political Affairs; UNDP Regional Centre for Africa; and several independent experts on elections. We are also indebted to the various interpreters and translators whose linguistic facilitation made it possible for all stakeholders to effectively engage throughout the various steps of developing and adopting the Model Law.

We are grateful, also, to the elected representatives of the people of the SADC Region, the Parliamentarians under the auspices of SADC PF, for exuding political leadership and maturity by joining hands in protecting the integrity of elections. It is on record that SADC PF MPs pioneered the development of the first regional and African normative instrument on elections when they adopted the *Norms and Standards for Elections in the SADC Region* in 2001. SADC PF is one of the original endorsing organisations for the *Declaration of Principles for International Election Observation* and the *Code of Conduct for International Observers* of 2005. In October 2013, SADC PF also adopted the *Benchmarks for Assessing Democratic Elections in Southern Africa*, which is a compendium of regional and international electoral principles, guidelines and obligations.

I am confident that this Model Law will assist Member States to accelerate the domestication of regional and international electoral principles and obligations in line with the objectives of the SADC PF as set in the Strategic Plan (2019 to 2023), in particular Objective 1 on "...advancing democratisation and socio-economic development" and Objective 4 on "...equal and equitable representation of women and youth in political and decision-making positions." These objectives dovetail into the broader SADC goal of creating a common legal framework to "promote common political values, systems and other shared values which are transmitted through institutions which are democratic, legitimate and effective."¹ The ultimate goal is to build a peaceful and secure regional community where industry, commerce and trade thrive and human security is guaranteed to improve the living and material conditions of the citizens of SADC.

I am convinced that this Model Law will spur national Parliaments to prioritise legislative reforms aimed at changing outdated electoral laws and practices so that elections across SADC Member States become more credible and add value to the democratisation process. The Model Law must help Member States to collectively address the contemporary democracy and governance challenges such as the gradual decline in voter turnout and governance indicators on participation, gender inequality, human rights, safety and security and rule of law.

It is not the regularity of elections that counts but their efficacy. The Model Law is a tool meant to help stakeholders achieve this goal.



Ms Boemo Sekgoma
SECRETARY GENERAL

1 Consolidated Text of the SADC Treaty (21 October 2015, p.6)

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PREAMBLE

Pursuant to Resolution 25 of the SADC Parliamentary Forum (SADC PF) 39th Plenary Assembly Session held in Ezulwini, Eswatini from 28 May to 7 June 2016;

Mindful of the Commitment of the SADC Heads of State and Government to democracy and to the individuals' inalienable Right to participate through and democratic processes in creating societies in which they live; and to ensure peace and stability in the SADC region;

Recognising the Norms and Standards for Elections in the SADC Region adopted by the SADC PF in 2001; the African Union Declaration on the Principles Governing Democratic Elections in Africa adopted in 2002; the Principles for Election Management, Monitoring, and Observation in the SADC Region (PEMMO) adopted in 2003 by the Electoral Commissions Forum of SADC (ECF-SADC) and Electoral Institute for Sustainable Democracy in Africa (EISA); the SADC Principles and Guidelines for Democratic Elections adopted in 2004 by the SADC Summit; the African Charter on Democracy, Elections and Governance adopted in 2007 by the African Union; the Benchmarks for Democratic Legislatures in Southern Africa adopted in 2010 by SADC PF; the Benchmarks for Assessing Democratic Elections in Southern Africa adopted in 2013 by SADC PF; and the adoption by the Ministerial Committee of the Organ (MCO) on Politics, Defence and Security Cooperation of the Revised SADC Principles and Guidelines Governing Democratic Elections in July 2015, as documents expressing the need and desire to have free and fair elections in the region;

Recalling the disenfranchisement of the past and reforming the shared desire to restore franchise and self-determination to the people of the region;

Accepting that the will of the people shall form the basis of the authority of government, and that this is fulfilled through credible, periodic elections, by universal and equal suffrage held by secret ballot, but also requires that other fundamental rights be fulfilled;

Noting that genuine elections lie at the heart of all democratic elections, that is, elections that offer voters a real choice, and where other essential fundamental rights are fulfilled;

Further noting that elections occupy a crucial position in the way people exercise their will towards self-governance and are crucial for the sustenance of democracy as an expression of the will of the people;

Affirming the importance of facilitating the unencumbered exercise of franchise and respecting the will of the people and ensuring that, the will is not subverted, that citizens are the core of representative democracy, and that democratic elections are the basis of the authority of any representative government;

Determined to create a vibrant electoral environment that allows candidates and the electorate to participate freely in free and fair elections, and cognizant of the need to create an environment that enables open contestation and free

and fair elections;

Committed to transparency, openness and accountability in the conduct of elections in the region;

Knowing that regular elections constitute a key element of the democratic process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development;

Acknowledging that the holding of democratic elections is an important dimension in conflict prevention, management and resolution, democratic elections should be conducted freely and fairly, under democratic constitutions and in compliance with supportive legal instruments, under a system of separation of powers that ensures the independence of the judiciary and legislature;

Cognisant of the existence of various significant challenges that undermined the credibility of elections and stifled the potential for the deepening of democracy in the SADC Region;

Embracing the critical role legislatures have in developing electoral laws that further democracy and create environments that foster active engagement and participation of citizens in their self-governance;

Aware that SADC Member States have embraced open and competitive plural politics, multi-party politics and regular elections since the end of apartheid, colonialism, one-party-state era, military rule and the cold war;

Acknowledging that member states are already taking legislative and other reforms to ensure the conduct of free, fair and credible elections that lead to democratic governance; the need to continue with such reform efforts in the conduct of elections in the region;

Appreciating that model legislation may serve a useful role as a yardstick for legislative review and may inspire further legislative reform;

We, members of SADC PF, adopt the following Model Law on Elections in Southern Africa as a guide to legislative efforts on election-related issues in the region.

PART I: PRELIMINARY PROVISIONS

1. Objectives

The objectives of this Model Law are to provide model provisions that assist Member States enact laws on elections that aim to:

- (a) consolidate electoral democracy in the SADC region through creating certain normative standards to regulate the conduct of the electoral process;
- (b) align the electoral obligations for SADC Member States that are scattered in various electoral instruments, including the SADC Principles and Guidelines Governing Democratic Elections and the Benchmarks for Assessing Democratic Elections in Southern Africa;
- (c) assist SADC Member States in the domestication and implementation of the principles, guidelines and obligations on democratic elections contained in various regional and international documents and instruments on elections, democracy and governance, in particular the revised SADC Principles and Guidelines Governing Democratic Elections;
- (d) provide for the regulation of all aspects of the electoral cycle and electoral processes and ensure that the process is consultative and inclusive, by involving all key stakeholders before, during and after elections;
- (e) promote a cordial approach to election observation and election management in achieving democracy in the SADC region;
- (f) promote electoral reforms, the strengthening of electoral institutions and the entrenchment of democratic elections in the SADC Region;
- (g) facilitate the development of inclusive and participatory electoral systems, practices and processes to advance peace, mitigate conflict, and deepen democracy; and
- (h) promote constitutionalism and the strengthening of institutions of democracy such as political parties, electoral management bodies (EMBs) and statutory commissions that are key for electoral governance such as the human rights, gender, and anti-corruption commissions.

2. Domestication of Model Law

This Model Law on Elections is non-binding, however, it is persuasive in guiding the law reform and in particular electoral law. It serves as a blueprint to comprehensively guide law and policy makers in modelling domestic election laws. To that effect, Member States are urged and

encouraged to incorporate the provisions of this law into their domestic legal systems to give rise to a binding legal effect.

3. Definitions

In this Model Law, unless the context indicates otherwise, the following definitions shall apply:

“Accreditation” means the granting of validation and official recognition as having the status of, and being qualified to perform, the specified role in elections. “Accredited” has corresponding meaning.

“Assisted voters” means persons who by reason of physical disability or visual impairment or any other form of incapacity are unable to independently cast their vote.

“Campaign” means an act by speech, conduct, transmission, distribution, or any act whatsoever by a political candidate, political party, coalition of parties or any of their supporters, agents or employees meant to solicit the patronage and vote of the electorate in any part of the country.

“Chief Election Officer” means the head of the secretariat arm of the election management body.

“Credible” means reliable, trustworthy, dependable and capable of being believed and accepted as being in line with international, continental, regional and national norms and standards.

“Credible elections” means ‘electoral processes that enjoy considerable support and confidence of the citizenry and international or regional community, leading to mutually agreeable results from competing entities that participate actively in the electoral processes.

“Delimitation” means the determination according to law by the lawful body appointed for such purpose, of the limits of territory covered by an electoral geographical unit, at local level, parliamentary, provincial and national levels.

“Democracy” means ‘a system of government based on the respect of the rule of law; in which all citizens of a state enjoy fundamental human rights and freedoms; and are fully involved in decision making processes about affairs affecting their welfare, typically by electing their representatives at all levels of government, under a free and inclusive electoral system.

“Democratic elections” means competitive, periodic, inclusive, regular elections in which persons to hold office at all levels of government are elected, through the secret ballot, by citizens who broadly enjoy fundamental human rights and freedoms.

“Early voting” means voting undertaken ahead of polling day by designated polling officers and essential services personnel who would be on duty during the elections.

“Elections” refer to presidential, parliamentary, senatorial, municipal and/or by-elections, unless otherwise stipulated. All references to elections shall also apply mutatis mutandis to referenda.

“Electoral Commission or Electoral Management Body (EMB)” means the constitutional body established to organize and conduct elections and election-related matters in the country.

“Electoral cycle” means ‘all interrelated segments of the electoral process during which key undertakings are carried out in the pre-election, election and post-election periods.

“Electoral disputes” refers to any dispute concerning the election, from registration; voter education; campaigning; the EMB, its composition, staff and the discharge of its duties; polling; vote counting; announcement of votes; election monitoring and observation; delimitation of constituency boundaries, and any similar matter attendant to the conduct of elections throughout the entire election cycle.

“Electoral justice” means ‘The means and mechanisms for ensuring that actions and procedures employed in the electoral processes are consistent with the national and applicable municipal and international laws in order to prevent electoral disputes’.

“Election Monitors” means local individuals or groups accredited to monitor elections and raise queries and objections with the EMB and voting personnel where necessary and in accordance with the law of the country.

“Election Observers” means individuals or entities, local and international, accredited by the EMB to observe and report on elections throughout the electoral cycle.

“Election officials or officers” means officials appointed by the EMB and accredited to conduct voting at polling stations and other designated places whenever there is an election or a referendum. This also includes persons accredited to undertake voter education, voter registration and persons engaged by the EMB in a capacity that is directly related to the conduct of an election such as Area managers used to manage electoral supplies on registration and elections days

“Electoral process” means ‘a series of key election-related undertakings encompassing, inter alia, the formulation of legislation, delimitation, conflict prevention and management initiatives, civic and voter education, registration of voters, development and implementation of codes of conducts, nomination of candidates, campaigning, voting, tabulation, results and announcements and election adjudication.

“Electronic voting” means voting through electronic systems as opposed to using ballot papers.

“Force majeure” means superior force or unforeseen circumstances that are unavoidable.

“Free elections” means ‘fundamental human rights and freedoms are adhered to during electoral processes including freedom of speech and expression of the electoral stakeholders; and freedom of assembly and association and that freedom of access to information and right to transmit and receive political messages by citizens is upheld; that principles of equal and universal adult suffrage are observed, in addition to the voters’ right exercise their franchise in secret and register their complaints without undue restrictions or repercussions.

“Fair Elections” means electoral processes that are conducted in conformity with established rules and regulations, managed by an impartial, non-partisan professional and competent Electoral Management Body(EMB); in an atmosphere characterised by respect for the Rule of law; guaranteed rights of protection for citizens through the electoral law and constitution and reasonable opportunities for voters to transmit and receive voter information; defined by equitable access to financial and material resources for all political parties and independent candidates in accordance with the national laws; and where there is no violence, intimidation or discrimination based on race, gender, ethnicity, religious or other considerations.

“Impartiality and fairness” means the equal treatment of voters and contestants and the application of the law, rules and regulations.

“Independent candidates” means individuals seeking election without endorsement by any registered political party or coalition of parties.

“Inmates” means individuals detained in police cells, awaiting trial or on remand.

“Media” means any registered medium of public mass communication, including broadcasting, publishing as well as social media.

“Members of the Commission or EMB” means the persons appointed to statutory positions in the Electoral Commission/EMB.

“Minister” refers to the Minister responsible for the administration of the Election or equivalent electoral legislation.

“Nomination” refers to the process of selecting a candidate for an election.

“Political party” means a registered organization through which individuals who constitute its membership seek to attain and exercise political power.

“Polling Station” means a designated place where votes are cast.

“Polling streams” means polling station sub-divisions created by an EMB for ease of voting process.

“Postal Ballot” means ballot voting conducted through posting marked ballot papers to the EMB.

“Presiding Officer” means the head of election officials officiating at a polling station or an election centre. This also includes persons who preside over referenda.

“Primary elections” means a process by which members of a political party can indicate their preference of a candidate in an upcoming general election or by-election, through narrowing the field of candidates.’

“Prisoners” means convicted and incarcerated individuals regardless of offence or length of incarceration.

“Referendum/Referenda” means public voting in which a yes or no question is put to the nation in terms of the Constitution or any law.

“Rejected Ballots” means ballot papers that have been cast but are being excluded from the number of valid cast ballots because they are not compliant with the provision of the electoral law on voting. This may include; improper marking by voter, no indication of a voter’s choice (blank) or being soiled.

“Regular” means ‘elections must be periodic, defined by a specific date or period.’

“Security Agents” means members of the security forces of the country, and includes the State police or any regional and municipal police, the army, special forces, intelligence services, and any such official in the employ of the state or any branch and sphere of the state, to ensure the safety and security of the country or any of its parts and the individuals living therein.

“Social Media” means interactive computer mediated technologies that facilitate the creation and sharing of information, ideas, interests and other forms of expression via virtual communities and networks.

“Special voting” means ‘voting made by a voter who is unable to cast an ordinary vote because they are unable to visit a polling place in his or her constituency for an approved reason.

“Spoiled ballots” means ballots not cast and returned to the presiding officer due to inadvertent or deliberate incorrect marking by a voter or due to factory printing errors.

“Staff” means the permanent professional employee of the EMB, including permanent, consultants, contractors and limited duration staff.

“Tallying centre” means a centre where votes are counted and aggregated to determine the total votes cast for candidates and parties

“Transparency” means degree of openness in the election process, which includes access to relevant information on a timely basis, a

readiness to provide justification for decisions and a frank admission and swift correction of any mistakes or oversights to inspire confidence and credibility in the system.

“Universal Adult Suffrage” means the right of citizens to vote in regular local and national elections unless otherwise restricted in accordance with the law.

“Voter” means an individual eligible to participate in the election in selecting a representative or representatives, and is registered to participate as such.

PART II: PRINCIPLES ON ELECTIONS

4. Regular democratic elections

The State shall hold regular democratic, credible, peaceful and transparent election conducted:

- (a) freely and fairly
- (b) under democratic constitutions and in compliance with supportive legal instruments
- (c) under a system of separation of powers that ensures the independence of the judiciary and legislature
- (d) at stipulated timeframes, as provided for in National Constitutions
- (e) by impartial, all-inclusive competent and accountable electoral institutions.

5. Rule of law and due process

- (1) The state shall uphold the rule of law as an essential condition for the fulfilment of human rights and representative democracy.
- (2) Elections shall be conducted under clear and unambiguous laws, following a detailed due process as stipulated.

6. Universal adult and equal suffrage and broad participation

- (1) The state shall ensure equal suffrage and broad participation of citizens including minority groups and that the broadest pool of voters are allowed to cast ballots.
- (2) All eligible citizens shall have equal opportunity to exercise their right to vote and be voted for.
- (3) Universal adult suffrage shall only be restricted based on reasonable and objective criteria.
- (4) Each eligible voter shall have right to a single vote.

- (5) Every person has the right to participate in public affairs, and citizen shall participate in the political processes and in political parties of their choice voluntarily without any coercion and prejudice.

7. Non-violence (freedom from threats and violence)

All stages of the electoral process shall be conducted without violence, intimidation, coercion, corruption, or any conduct that can interfere with the free conduct of the elections in accordance with the values of electoral justice.

8. Boundary demarcation

The State through the body responsible for electoral boundary demarcation shall ensure that electoral boundaries are drawn to ensure that voters are represented in the national, provincial or district and local authority legislature.

9. Removal of barriers

The state shall remove barriers to the electoral process for those with specific impairments such as illiteracy, language barriers, age and disability.

10. Levelling the playing field

The state shall ensure that the electoral environment shall be conducive to allow candidates to compete freely.

11. Transparency and prevention of corruption

- (a) The state shall ensure a transparent and corruption free electoral process.
- (b) The state shall promote campaign and political party funding regulation that ensures transparency and shall promote public participation in the process.
- (c) There shall be transparency and accountability with regard to the use of public resources by all parties eligible for public funding.

12. Recognition and protection of rights

The state shall take necessary steps to ensure realization and protection of the rights of all under its jurisdiction. This obligation means ensuring that the domestic legal framework incorporates the international obligations in treaties and agreements entered to by the State, and that the State regulates violations of human rights not only by the State itself, but also by non-state actors and private individuals.

13. Freedoms of association and assembly

- (1) The state must ensure freedom of assembly essential to democratic elections for candidates, political parties, voters and other stakeholders. Freedom of assembly may only be restricted under

circumstances prescribed by law and necessary in a democratic society in the interest of national security, public safety or for the protection of the rights of others.

- (2) The state shall protect freedom of association including the right to form political parties and to participate freely in the lawful activities of such political parties. Restrictions shall be prescribed by law as necessary in a democratic society in the interest of national security, public safety or for the protection of the rights of others.

14. Freedom of movement

Freedom of movement shall be guaranteed and protected, including the right of citizens who are abroad to return to their country and to participate in elections and electoral processes. Any restriction of the right to freedom of movement shall be proportionate to the interests it intends to protect.

15. Equality before the law and absence of discrimination

- (1) The State shall ensure equality before the law and the absence of discrimination in the exercise of human rights and fundamental freedoms.
- (2) The State shall take measures to ensure the de facto equality of men and women and to promote and advance equality for all groups that have been victims of previous discrimination.

16. Freedom of opinion and expression

Free communication of information and ideas by voters and candidates is essential to genuine elections and shall be protected by the State. It may only be restricted under circumstances prescribed by law, as necessary in an open and democratic society, and for the protection of the rights of others as per the law.

17. Access to information

It is the duty of the State to guarantee citizens' right to request and receive information as a critical means of ensuring transparency and accountability throughout the electoral process.

18. Right to security of the person

The right to security of the person shall be protected by the State, and this includes protection from arbitrary arrest, detention and exile, and the protection of voters, candidates and their agents, poll workers, and domestic and international observers from interference, coercion or intimidation.

19. Equal treatment of constituencies and voting regions

Any acts such as political violence, kidnapping, murder, threats of sanctions such as denial of development opportunities in opposition

controlled areas that prevent eligible individuals to register to vote and to vote in secrecy is outlawed.

20. Acceptance or rejection of the outcome

- (1) Electoral candidates and their supporters shall accept and respect the outcome of elections that have been proclaimed by the Electoral Management Body in accordance with the law of the land as final.
- (2) Results of elections and processes that led to such outcome shall be challenged only in accordance with the law of the land.

PART III: THE ELECTORAL MANAGEMENT BODY (EMB)

21. Establishment and Composition

- (1) The Electoral Management Body shall be established by the Constitution.
- (2) The composition of the EMB and the criteria for appointing members of the EMB shall be set out in the Constitution.
- (3) The Constitution shall provide for the independent appointment of members of the EMB and shall provide for the selection of such members by a Parliament or any such other constitutional body.
- (4) The selection shall be on the basis of the individual's calibre, stature, public respect, competence, impartiality and their knowledge of elections and political development processes. The selection of members of the EMB should be transparent and interviews conducted publicly where all political parties and other interested stakeholders may observe.
- (5) The selected members of the EMB are to be approved by Parliament.

22. Independence

- (1) The EMB shall:-
 - (d) be independent, subject only to the Constitution and the law as passed by Parliament;
 - (e) ensure independence and the security of tenure for its members as entrenched in the Constitution;
 - (f) work freely, without interference or intimidation;
 - (g) be accountable only to Parliament. The law shall provide for the EMB to report to Parliament once a year, and in addition, Parliament shall have the power to request representations, submissions or reports from the EMB at its instance. Such EMB reports shall include statistics on gender;

- (h) maintain independent offices with no interference from any state institution.
- (1) Every individual and political party participating in elections shall recognize the authority of the EMB as the body empowered to oversee the electoral process and accordingly render full cooperation to such an EMB in order to facilitate its duties.
- (2) All decisions and actions of the EMB are subject to judicial review.

23. Staff

- (1) The EMB shall recruit and maintain a permanent gender balanced professional staff to discharge its duties, and shall have the powers to recruit Election Officers on a temporary basis for polling purposes.
- (2) The EMB have the autonomy to appoint and dismiss its professional staff, and in its staff shall no secondment be permitted.
- (3) Staff shall be appointed and dismissed based on professionalism and competence, which includes experience, expertise, objectivity, efficiency, accuracy and commitment.
- (4) Staff of the EMB shall be clothed with security of tenure, and can only be removed from office for violation of the electoral law, gross negligence, incompetence or incapacity.
- (5) The EMB shall be responsible for coordination of the Election Officers recruited for a temporary period to conduct voting at polling stations across the country, and such Election Officers shall be properly and adequately trained prior to deployment.
- (6) Electoral staff at all levels shall be neutral and nonpartisan.
- (7) The EMB shall ensure that its permanent staff is fully trained, equipped and competent for the discharge of their legal duties.

24. Functions

The EMB shall be responsible for the following:

- (1) organizing and conducting elections, by-elections and referenda in accordance with the Constitution and the law; and
- (2) ensuring the delivery of free and fair, credible, peaceful and transparent elections, with candidates and voters participating without hindrance, coercion or violence, and with the expressed will of the voters being reflected accurately in the pronounced results of elections.
- (3) ensuring that there is effective communication and consultation with election stakeholders and the wider public before, during, and immediately after elections.

- (4) holding periodic meetings with representatives of the media at every important stage of the electoral process as a way of communicating with the general public, and shall conduct general media briefings and general statements to the media to avoid misrepresentation.
- (5) preparing and making available a time-table of the electoral process to all stakeholders.
- (6) ensuring that there is adequate voter and civic education on elections and electoral processes.

25. Promulgation of electoral regulations

- (1) Promulgation of electoral regulations operationalising the electoral law shall be the sole prerogative of the EMB, which is the organiser and conductor of elections in line with the constitution. The regulations shall not be subject to approval or rejection by the Minister responsible for the administration of the Electoral Act, or any other minister or executive functionary.
- (2) The EMB shall be accountable only to Parliament for the rules it promulgates, provided that such rules or any of its conduct are subject to judicial review upon application.

26. Finance and accountability

- (1) The EMB shall have its own budget for all its activities and functions pre-elections, during elections, and post-elections, and for the full operation of the Commission in non-election season, directly voted for by Parliament and allocated from the consolidated revenue fund.
- (2) The State shall ensure that funding of the EMB is guaranteed and protected in the Constitution.
- (3) Parliament may legislate for the budgetary allocation of the EMB not to go through a Ministry or a Government Department.
- (4) Parliament shall provide adequate financing to the EMB throughout the electoral cycle, and for ongoing operations of the EMB outside election seasons.
- (5) The EMB shall manage its own allocated funds, and the Head of the EMB shall be its accounting officer for all public and private funds it has received.

PART IV: ELECTORAL SYSTEMS

27. Electoral systems design and principles

- (1) The Constitution shall provide for an electoral system that ensures broad participation of citizens especially marginalised groups in

the electoral process

- (2) The engineering of the electoral system shall be guided by the political, historical, socio-economic factors as well as the party system of each country and embrace principles such as: representation; genuine choice; transparency, legitimacy.
- (3) The Electoral law should clearly set out the form, content and formulas of the electoral system adopted.
- (4) Electoral systems reform should be inclusive so that all stakeholders, particularly the electorate understand the mechanics of the system in terms of how the seats allocation would be determined; the nature of representation and the political consequences of the system.
- (5) Electoral systems should promote and protect fundamental human rights as well as the secrecy of the ballot.
- (6) Positive measures such as diversity management, affirmative action, including quotas for women, youth, disabled, the elderly, minority ethnic groups and other disadvantaged groups, shall be adopted as part of electoral systems, and mechanisms put in place to ensure their enforcement.

PART V: DELIMITATION OF ELECTORAL BOUNDARIES

28. Delimitation and demarcation body

- (1) The Constitution or relevant national legislation shall provide for a body that is responsible for the delimitation of electoral boundaries at all level of political representation for which elections are held.
- (2) Such body shall be independent and subject to the Constitution and the law.
- (3) Appointment of members to the delimitation body shall be a process that ensures independence and members are guaranteed security of tenure at law.
- (4) The delimitation process shall be inclusive, have representatives of the electorate, political parties, civil society and similar stakeholders and individuals with relevant skills and experience.
- (5) Delimitation should not be undertaken for party political gain.

29. Delimitation exercise and consideration

The delimitation body shall:-

- (1) draw the boundaries of constituencies in a fair manner applying

a stipulated formula prescribed by legislation, taking into consideration population size and geographical considerations such as location and accessibility.

- (2) take into consideration historical, geographical/natural or political/administrative boundaries, and population sizes and demographics which could be crucial in determining representation of various marginalized constituents such as women, in a non-discriminatory or distorted manner.
- (3) as far as possible, be done in a manner that achieves fair representation of the electorate.
- (4) prescribe for timing of delimitation to ensure impartiality.
- (5) resolve disputes through processes prescribed in the national law.

PART VI: TIMING OF ELECTIONS

30. Regularity of elections and election dates

- (1) Elections shall be conducted periodically, and at regular intervals. Such intervals, as well as any variations, shall be clearly set out in the electoral law or the Constitution of the country.
- (2) The Constitution or an electoral law shall stipulate the time in the form of specific dates within which elections shall be held so that all electoral stakeholders can adequately prepare and participate in the electoral process.
- (3) If the stipulation in (2) is not possible, the Head of State shall be required by the electoral law to give adequate notice from the date of dissolution of Parliament for an election date to give sufficient time to the EMB to prepare for the elections and to ensure fair play.
- (4) Any postponement of the election shall be necessary by reason of force majeure or circumstances where it is not reasonably possible to conduct a free and fair election.
- (5) Political unrest, anticipation of unrest, and eruption of violence shall not constitute force majeure or unique exigencies unless it is such that the security forces have failed to bring the country to order, provided that no state of emergency may be declared to prevent the holding of elections.
- (6) Parliament shall approve the alteration or fixing of election dates pursuant to (4) and (5).

31. Election schedule

- (1) The EMB shall release a schedule for each election indicating among other things:
 - (a) the cut-off times for all activities to be performed in terms of the Election Timetable;
 - (b) the cut-off time for the voters list that are eligible to vote (alternatively, the cut-off date for the registration of voters for that election): the cut-off date for the submission of the lists of candidates to the EMB; the cut-off dates for the issuance of the list of non-compliance by candidates;
 - (c) the cut-off dates on which the list of candidates can be inspected and be objected to;
 - (d) the cut-off dates for the EMB to decide on the candidate lists objections;
 - (e) the cut-off dates for the appeals against the decisions of the EMB;
 - (f) the cut-off dates for the (Electoral) Court to decide on the appeals lodged against the decision of the EMB; the date on which the final list of eligible candidates will be published;
 - (g) the dates on which special voting will be held (if any);
 - (h) the cut-off date for the declaration of Election Results;
 - (i) the cut-off date for the submission of election petitions concerning matters that affect the materiality of the Election Results to the EMB;
 - (j) the cut-off dates for the EMB to decide on the election petitions submitted;
 - (k) the cut-off dates for the filing of appeals against the decisions of the EMB in respect of the petitions filed;
 - (l) the cut-off dates for the (Electoral) Court to decide on the appeals to the decision of the EMB on the issues raised in petitions; the final date by which the epic court could decide on any appeals against the decisions of the (Electoral) Court; and
 - (m) the final date on which the results will be declared and published.

- (1) The election schedule, including all stages of electoral events should be a subject of consultation with all election stakeholders.
- (2) The election schedule shall allow for sufficient time to complete the different aspects of the electoral calendar, including for registration of complaints and disputes and the resolution thereof.

32. Referenda

- (1) The Constitution shall stipulate a clear process on how citizens may initiate issue-based referenda in certain parts of the country, region or nationally.
- (2) Referenda shall be organized and regulated as any other election as per this Model Law.

PART VII: POLITICAL PARTIES AND ELECTION CANDIDATES

33. Registration of political parties

- (1) Every citizen shall have the right to form and run a political party and all parties shall be encouraged to ensure equal gender representation and participation as candidates in elections.
- (2) There shall be a law to regulate the registration, the activities and de-registration of political parties. Such law shall also address the funding of political parties.
- (3) The body responsible for the registration of parties as per the law referred to in (2) above shall maintain an updated list of all registered political parties in the country and shall release such information upon request by any individual or entity in accordance with a processes laid out in the law.
- (4) Political parties wishing to de-register shall communicate this in writing to the body responsible and that body shall have the authority to effect the changes necessary to the status of such political parties following due process.

34. Registration of political parties with the Electoral Management Body for election purposes

- (1) All political parties and coalition of parties shall register with the EMB to indicate their intention to contest in elections. The EMB shall cause to be published the procedure of such registration.
- (2) For purposes of elections, parties may contest individually or as an alliance or coalition.
- (3) Where a political party and coalition has been so registered by the EMB, a notice shall be put in at least two national circulating

newspapers to the effect ahead of an election that such a party has been registered as a political party, together with the assigned registration number.

- (4) The EMB may remove a political party from the list of parties registered with it for a particular election on notice for failure to comply with the electoral Act and code of conduct. Such a removal pursuant to this clause is reviewable in the Electoral Court.
- (5) Individual candidates contesting elections as members of a political party shall automatically have their candidature nominations and registrations revoked upon de-registration of the political party under (1) or (2). Such individuals are eligible for nomination and registration as independent candidates or as members of another political party, and such nomination and registration shall follow the normal procedure.

35. Eligibility of candidates

- (1) Eligibility of individuals to contest elections as candidates shall be provided for by the Constitution and electoral legislation.
- (2) Every citizen has the right to be elected, and this right may only be restricted based on objective and reasonable criteria, which include residency, age, mental incapacity, criminal conviction, minimum amount of support from potential voters, or a reasonable monetary fee.
- (3) Restrictions on candidate eligibility shall not be based on religion, creed, gender, ethnicity, race, sexual orientation, marital status, or physical disability.

36. Nomination and registration of candidates

- (1) Registration and nomination of electoral candidates shall be administered by the EMB.
- (2) The EMB shall have the powers to promulgate regulations on the registration and nomination of voters and candidates, and such promulgated rules shall ensure that registration and nomination of voters and candidates shall not be encumbered by unnecessary technical and procedural constraints.
- (3) The EMB shall by gazetted regulations set up registration and nomination procedures and time lines.
- (4) At a time stipulated by the EMB, contesting political parties, alliances and or coalitions shall submit a list of all their candidates at all levels of the election. Subsequent alterations to the list shall be done in the manner provided by the EMB.
- (5) The EMB shall have the powers to extend the time for nominations, including for specific nomination centres in the event of an election being postponed under circumstances stipulated in Section 30 of

this Model Law.

- (6) The right to stand as a candidate in an election shall be on free and equal grounds.
- (7) Nomination fees to stand as a candidate shall be reasonable and affordable so as not to unduly exclude potential candidates.
- (8) Refusal by the EMB to register a candidate's nomination may be challenged by the candidate before the Electoral Tribunal, after which, if not resolved, the candidate may bring the matter before the Electoral Court. Appeal procedures post that shall be in terms of the normal legal appeal processes in the Member State.
- (9) Political parties and coalitions wishing to de-register, withdraw their candidature, or any of their candidates from an election, shall communicate this in writing to the EMB, and the EMB shall effect the changes necessary to the status of such political parties or its candidates.

37. Registration of independent candidates

- (1) The electoral law shall make provisions for the contesting of elections by Independent candidates.
- (2) Independent candidates' intent on running for elections shall not be required to maintain standing registration with the EMB as with political parties, but shall register with the EMB for purposes of the election for which they wish to contest.

38. Election agents

- (1) Every independent candidate, political parties and coalitions shall be entitled to appoint an election agent to represent them at each polling station and to monitor voting at the respective station.
- (2) Where polling streams have been created by the EMB, candidates, political parties and coalitions shall be entitled to appoint election agents to represent them in each polling stream.
- (3) The names of appointed election agents shall be communicated to the EMB in writing by the cut-off date stipulated by the EMB in issued regulations or gazetted notices.
- (4) Election agents shall be given unhindered access to the polling stations at which they are posted, and shall be consulted in decisions made by the Presiding Officer or the Chief Election Officer, as the case may be, at each polling station.
- (5) Election agents shall ensure that the interests of their candidates, political parties and coalitions are advanced in so far as the holding

of free and fair, transparent, peaceful and credible elections. Election agents shall also observe and monitor vote counting and may transmit results in respect of their polling station to their principal.

39. Political party funding

- (1) Parliament shall enact a law to make provision for public and private campaign finance for and political parties and candidates with clear rules and procedures to govern the process, considering the need for an even playing field.
- (2) On Public Funding:
 - (a) The State shall ensure that public funding is on a pre-determined and legislated formula that ensures non-discrimination, proportionality and equality.
 - (b) Parliament should provide modalities of the allocation and disbursement of candidate and party campaign funds as well as funds for parliamentary parties' and Independent Members of Parliament from the fiscus, including the allocation formula.
 - (c) Parliament shall make provision for accountability in the use of public funds by the body entrusted with the funds as well as the recipient candidates, political parties and coalitions (as the case may be).
 - (d) The EMB shall be empowered to ensure that proper election expenses returns are submitted on time, to inspect party accounts, and to require political parties and candidates to have properly audited and verified accounts.
 - (e) Inclusivity of women and youth in political parties' structures and nomination lists shall be a requirement for access to public funding.
- (3) On Private funding:
 - (a) Funding of political parties and candidates, including foreign funding, shall be regulated by a law passed by Parliament.
 - (b) Parliament shall require full disclosure of the private sources of private funding.
 - (c) In order to limit the undue impact of money on the democratic process and the outcome of an election, the electoral law shall through promulgated regulations:
 - i. set limits to the campaign donations;
 - ii. and prohibit certain types of campaign expenditures;
 - iii. place campaign expenditure ceilings;

- (d) Parliament shall make provision for accountability in the use of private funds by the recipient candidates, political parties and coalitions (as the case may be).
- (4) Parliament shall make provisions pertaining to privileges of the executive during election time to make distinction between such privileges and abuse of state resources for party activities, including for political campaigning.

PART VIII: ELECTORAL CODE OF CONDUCT

40. Binding Code of Conduct

- (1) The EMB shall ensure that there is a binding code of conduct governing the conduct of all activities legally recognized before, during and after elections.
- (2) The code of conduct shall ensure protection of the right to vote and provide a comprehensive provision on prohibited conduct all electoral actors.
- (3) The development of the code of conduct by the EMB shall be done in consultation with all stakeholders.
- (4) The Code of Conduct shall be binding to all electoral stakeholders including: political parties, independent candidates, members and supporters of political parties, the media, civil society groups, security sector agents, Election Officers, the EMB, and the Government

41. Code of Conduct and campaigns

The Code of Conduct shall have provisions that emphasise and guide behaviour of all stakeholders during election campaigns and other political activities.

42. Signing of the Code of Conduct

All political parties and independent candidates shall sign the Code of Conduct before being included on the ballot paper and they shall abide by the Code of Conduct, which shall provide for sanctions in the event of breach.

43. Breach of the Code

The EMB shall put in place a mechanism to monitor the breach of a Code of Conduct. Transgressions shall be dealt with through the

Electoral Court or equivalent statutory body provided for in the law of the Member State.

PART IX: ELIGIBILITY OF VOTERS

44. Eligibility of voters

- (1) All persons who are citizens of the State upon attaining the prescribed age shall be eligible to vote at the time of elections.
- (2) In the case of local government elections all foreign nationals who are resident in the country for a period of time prescribed by law shall be eligible to vote.
- (3) Citizens in the diaspora, in the case of presidential and parliamentary elections, shall be eligible to vote as prescribed in the law.

45. Eligible individuals living and working outside the country

- (1) The State shall make arrangements to enable people living and working outside the country to register to vote and to vote where a country maintains diplomatic or trade missions.
- (2) The State shall ensure that these arrangements are made in every country where the Government maintains a permanent diplomatic mission.

46. Prisoners

- (1) Prisoners or detainees shall be eligible to vote. The State shall make arrangements to facilitate the registration, voter education and voting by prisoners or detainees in all detention and correctional facilities within the country.
- (2) The right or eligibility to vote above shall not include citizens held in foreign prisons or detentions.

47. Special and early voting

- (1) The state shall provide for special for persons unable to vote at local polling stations on election day for reasons of foreign service, being disabled or bedridden and hospitalised, pregnancy, being on deployment for duty by the State or the EMB on election day provided they have complied with a process laid down for this purpose.
- (2) The state shall provide an opportunity for early voting to designated polling officers and essential services personnel who would be on duty during the elections.

48. Patients in hospitals and senior citizens

Voters who are bed-ridden or under hospital care as well as senior citizens shall be able to vote if they so wish. The EMB shall make appropriate arrangements.

PART X: VOTER REGISTRATION AND VOTERS' ROLL

49. Registration authority

- (1) The EMB shall be responsible for registration of voters.
- (2) There shall be a direct compatibility between national and voter registration systems and processes to facilitate continuous registration.
- (3) The national registration authority shall cooperate with the EMB to provide citizens with access to registration documents and information required to facilitate voter registration.
- (4) The EMB shall employ, train and equip a competent team of registration officials to attend to voter registration.

50. Period of registration

- (1) Voter registration shall be a continuous exercise, conducted by the EMB.
- (2) Voter registration shall continue until such a point so as to allow sufficient time for the EMB to adequately prepare for polling.
- (3) The suspension period of voter registration by the EMB during elections and its resumption thereafter shall be clearly stated in the electoral law.
- (4) In any event, voter registration shall allow sufficient time for all eligible voters and contestants to register and inspect the Voters' Roll, as well as to raise objections or any other matter related thereto, and to have time for adjudication of appeals before elections are held.

51. Registration centres

- (1) Prior to election, voter registration centres shall be established in every ward of the country, with a registration centre established within a radius not exceeding 5 kilometres of every household.
- (2) The EMB shall ensure that there are enough registration centres for each constituency and ward, considering the population size and accessibility of the centres.
- (3) The EMB shall publicise well in advance of elections, the location of registration centres in every constituency and ward.

52. Registration requirements

- (1) Registration shall be done in a language that an eligible voter understands.
- (2) The EMB shall endeavour to employ up to date, secure and cost effective technology to ensure the ease, accuracy and credibility of the registration process, and to ensure that registration information is digitally captured.
- (3) Subject to the Constitution or relevant legislation, proof of eligibility shall be adduced by prescribed documentation.
- (4) The proof of residence requirement in the electoral law shall not be used as an impediment to voter's right to register but a mechanism to facilitate participation (including at local level) and ease of electoral administration by the EMB.
- (5) Provisions should be made to ensure that eligible voters are provided with a form of government identity document in good time for registration.

53. Voters' Roll

- (1) The EMB shall maintain a roll of all registered eligible voters. This voter's roll shall be publicly available for inspection at designated centres throughout the country.
- (2) The Voters' Roll shall be available in both hard copy and a tamper-proof and electronic copy to any interested person at a prescribed fee. No person may be denied access to the voter's roll upon payment of the prescribed fees.
- (3) The soft copy version of the voters' roll shall be available free of charge, and no person may be denied access upon request. Such a request shall be made in a prescribed manner and the requested information shall only be used for electoral purposes and for no other purpose.
- (4) The EMB shall ensure that before being shared with stakeholders and other interested parties, the voter's roll is formatted in a manner that allows for its use by electoral stakeholders for planning and ease of participation while equally protecting its integrity.
- (5) Sufficient time shall be allowed for all eligible voters to register and inspect the roll, as well as to raise objections if any and to have time for adjudication of appeals before elections are due.
- (6) The EMB shall employ up to date technology to ensure that the voters' roll is digitalized and is kept up to date. Deceased and ineligible persons should be removed from the voters roll.

PART XI: VOTER AND CIVIC EDUCATION

54. Election Management Body to conduct voter education

- (1) The State shall adequately fund voter education in all parts of the country that assists voters to be acquainted with the voting procedures and other aspects of civic awareness relating to elections.
- (2) Voter education shall be conducted in all the wards in the country, and the EMB shall make use of public media, broadcasting, print and the internet, to educate the population on the importance of voting, making informed choice, and on the voter registration and voting processes requirements.
- (3) The EMB shall collaborate with civil society organisations operating in the country to enhance the voter education content and carry out complementary voter education programs. The civil society organisations undertaking such voter and civic education shall ensure that they are disseminating correct information.

55. Timing

The EMB shall commence with voter education from the date of proclamation. This clause does not preclude the EMB from its obligations to conduct continuous voter education.

56. Content of voter education

- (1) Voter education must:
 - (a) equip voters with the information required to make an informed choice when voting;
 - (b) include voter registration and encourage citizens to ensure they are registered to vote;
 - (c) be presented in a neutral and non-partisan way;
 - (d) ensure a wider outreach to all sectors of society;
 - (e) be available throughout the whole country, including remote areas;
 - (f) effectively cater to the level of literacy of the population, and require the EMB to provide information in print, oral and audio-visual mediums; and
 - (g) be conducted in at least all official languages ensuring that literature and media campaigns are done in these languages, and that those campaigns are done in languages best understood by the locals within which such voter education is occurring.
 - (h) When technology is used for registration and other electoral processes, simple content shall be developed on the use of

that technology to ensure that voters do not have challenges during voting.

PART XII: CAMPAIGNING

57. Freedom of campaigning and association

- (1) Candidates shall be afforded equal, unhindered and unimpeded freedom and access to any parts of the ward, constituency or country, where they wish to campaign during the prescribed campaign period including outside the country.
- (2) There shall be freedom of expression, association, assembly and the right to access information during the campaign period.
- (3) Voters shall not be coerced to:
 - (a) vote for a particular candidate;
 - (b) attend rallies of political meetings.
- (4) Public order legislation and gathering restrictions shall not be used to:
 - (a) restrict civil society organisations from arranging gatherings in pursuant to fostering free and fair, credible, peaceful and transparent elections;
 - (b) prevent political parties and candidates from campaigning, to meeting their supporters and to disseminate their information.
- (5) There shall not be unlawful disruption of gatherings and rallies by security agents.
- (6) Public order legislation and gathering restrictions shall be administered fairly and equal across the political divide.
- (7) All public campaigning shall cease at least two days prior to polling day.
- (8) Candidates and political parties shall share their campaign programmes with the EMB and the police to avoid clashes over venues.

58. Security

- (1) Presidential candidates shall be afforded adequate State security at the State's expense from proclamation date, and for 30 days after the result of the elections has been officially declared.
- (2) Where state security has been provided to presidential candidates,

the security agents shall serve a protection service function only not destabilise the candidates' campaign programme.

- (3) Political Parties may be allowed, at their own expense, to engage services of legally registered private security companies for the protection of their presidential candidates during election campaigns.
- (4) The State shall ensure that there is professional, neutral and impartial security presence to maintain the peace and provide security to citizens and candidates during campaigning in public places.

59. Campaigning on polling day

Wearing political regalia, distributing political material, transmitting political messages or campaigning in anyway whatsoever shall be prohibited within polling stations.

60. Protecting elections from organised interference

The State shall put in place measures to counter organised interference designed to manipulate and undermine the outcome of elections. Such measures shall seek to detect and combat organised interference.

PART XIII: MEDIA

61. Access to media

All political parties and candidates shall be afforded equal opportunity to access to the public media to disseminate their ideas, manifestos for free.

62. Impartiality of media

- (1) In covering the electoral process, the media should maintain impartiality.
- (2) Every candidate and political party shall respect the impartiality of the public media by undertaking to refrain from any act which may constrain or limit their electoral adversaries from using the facilities and resources of the public media to air their campaign messages.

63. Public media

- (1) Election contestants shall have equitable and unimpeded access to public media for purposes of advertising and spreading their messages to the electorate before and during the campaign period.
- (2) Political Party Broadcasts (PPBs) on public media shall be free to all competing political parties and candidates. Such broadcasts

shall be made in equal coverage and at same time slots.

- (3) Free airtime in (2) applies to PPBs only and the public media may still charge political parties for additional airtime required for adverts and propaganda.

64. Private media

- (1) The State shall enact a law that affirms the existence of private media and regulates its operations in line with regional and international best practices.
- (2) Candidates shall have unimpeded access to private radio, television and print media houses for purposes of advertising and spreading their messages to the electorate before and during the campaign period.

65. Prohibition of hate speech, bias and propaganda

- (1) Private and public media

Private and public media shall not broadcast and publish abusive language, incitement of hate, and other forms of provocative language that may lead to bias, discrimination or violence before, during and post- elections.

- (2) Social Media

The use of social media to broadcast and publish hate speech and abusive language that may lead to bias, discrimination or violence before, during and post- elections shall be prohibited.

66. Accreditation of media covering elections

- (1) Media personnel covering elections and requiring access to election centres, polling stations and other facilities shall be accredited by the EMB as stipulated in the electoral law.
- (2) Accreditation for access to polling and other election centres shall not be denied on the basis of perceived bias or any other discriminatory factor, provided that individuals and entities seeking such accreditation conform to a legally enforceable Code of Conduct.
- (3) The Media Commission or an equivalent body responsible for accreditation of the media for operation in the country shall work together with the EMB, but the EMB may not override the decisions of the Media Commission or its equivalent on the status of a concerned media house or individual journalists.

67. Code of Conduct for media

- (1) The Media Commission shall through a consultative process involving all stakeholders in elections:

- (a) develop a Code of Conduct for the media, to which all media covering elections shall adhere to;
 - (b) be responsible for the enforcement of the Code of Conduct for media and shall work together with the EMB to enforce compliance with the Electoral Code of Conduct;
 - (c) develop means to monitor behaviour of public and private media during electoral campaigns.
- (2) Both public and private media shall be subject to the Electoral Code of Conduct and the Code of Conduct developed and enforced by the body responsible for media regulation and monitoring in the country.
 - (3) The media Code of Conduct shall encourage fair reporting and prevention of hate speech.
 - (4) Codes of Conduct shall be compiled in a consultative and representative process

PART XIV: ELECTION OBSERVING AND MONITORING

68. Accreditation of observers and monitors

- (1) The EMB shall be responsible for the accreditation of election observers, election monitors, political party and candidate agents.
- (2) Any individual or entity wishing to observe or monitor elections shall:
 - (a) declare their intent to do so with the EMB in the manner prescribed by the electoral law; and
 - (b) be accredited to observe and monitor elections.
- (3) For entities intending to observe and monitor elections, in addition to accreditation of the entity, each individual who is to be a party to the delegation shall be accredited.
- (4) No one may be denied accreditation to be an election observer or monitor unless it is reasonable to do so and the accreditation of such individual or entity would subvert the holding of free and fair elections, provided that perceived biases in the observer or monitor may not be a reason for denial of accreditation.
- (5) The EMB shall have the powers to invite individuals and entities to observe and monitor elections; provided that the SADC Electoral Observer Missions (SEOMs) and the African Union Electoral Observation Mission (AUEOM) constitute the entities that the EMB shall invite.

- (6) The EMB shall make it an accreditation requirement that there is gender inclusivity among the entities applying for observation and monitoring.
- (7) Election observers and monitors shall display identification provided by the EMB at all times while conducting observation and monitoring, and present it to electoral officials and other relevant national authorities when requested.
- (8) The role of civil society shall be recognized in election monitoring and civic education.
- (9) The election observers and monitors shall not be confined to observe and monitor in a specific area such as a district or province during parliamentary and presidential elections.
- (10) The EMB shall allow election observers to observe and monitor all stages of the electoral process over and above polling and counting.

69. Conduct of observers

- (1) The EMB in consultation with all electoral stakeholders shall develop a Code of Conduct that binds all election Observers and monitors upon accreditation.
- (2) The EMB shall allow accredited observers and monitors access to the Voters' Roll at ward, constituency and national levels as requested, provided that the observers and monitors shall pay prescribed amounts as with any other individual or entity who requests access to the voters' roll.
- (3) The EMB shall allow observers and monitors access to technological data for purposes of technical election monitoring, where such technological data is used by the EMB.
- (4) There shall be no time-restrictions with election observation and monitoring, and election observers and monitors shall be allowed to conduct their business on a long-term basis provided that foreign election observers have the requisite immigration status that allows for stay for the declared duration of the election observation mission.
- (5) Election observers and monitors shall closely observe and monitor the conduct of elections to ensure the holding of free and fair, credible, transparent and peaceful elections, and shall report to the EMB and other relevant authorities on the same.
- (6) Election Observers shall: -
 - (a) respect the laws of the host Government; shall abide and be guided by the principles of impartiality, neutrality, comprehensiveness, transparency, inclusiveness and objectivity, and shall respect the sovereignty, cultural and customary practices of the country;

- (b) respect the role, status and authority of the EMB and other relevant national authorities at all times;
 - (c) follow any lawful instruction from the EMB and other national authorities; and
 - (d) channel any complaints they may have to the EMB and other relevant national authorities.
- (7) Election Observers and Monitors may not: -
- (a) influence voters or candidates to act in any manner;
 - (b) in any way, seek to determine the outcome of the election, and may not advance the agenda of any competitor or of any entity. Observers shall only observe elections and report on their observations;
 - (c) interfere in the electoral processes;
 - (d) express partisan political views whether by word, symbol, conduct, song or otherwise; and
 - (e) accept anything of value from political contestants.
- (8) Election monitors may report irregularities, fraud or significant problems to the attention of Election Officers and Presiding Officers on the spot, and shall do so in a non-obstructive manner.
- (9) Election Observers may while inside the polling station:-
- (a) pose questions to election officers, political party representatives and other observers inside polling stations;
 - (b) answer questions about their own activities;
 - (c) ask and obtain answers from voters voluntarily, but may not ask voters to tell for whom or what party or referendum position they voted for or are going to vote for, provided that they do not obstruct the election process.

70. Revocation of accreditation

- (1) EMB may revoke the accreditation status of an electoral observer or monitor for a violation of the Code of Conduct or of the electoral law of the country.
- (2) Revocation of the accreditation of an entity would result in the automatic revocation of the accreditation of all parties to that entity.
- (3) All revocation of accreditation may be challenged before the relevant review and appeal bodies.

PART XV: POLLING STATIONS

71. Number and location of polling stations

- (1) The EMB shall cause to be publicized, well in advance of elections, the location of polling stations in every ward, district and province.
- (2) The EMB shall ensure that there is adequate number of polling stations for each district and ward, bearing in mind population size and accessibility of the polling stations, provided that there shall be a polling station within a radius of 5 kilometres of every resident in a ward.
- (3) Polling stations shall be public and at neutral places such as schools, tents, shopping centres and mobile vehicles.
- (4) Each polling station may have multiple voting streams to fast track voting.

72. Accessibility of polling stations

- (1) The EMB shall ensure that polling stations and voting booths are accessible to all including people living with disabilities, the elderly, and women with children.
- (2) The EMB shall ensure that those with visual impairments who do not wish to be assisted to mark the ballot paper are able to cast their votes.

73. Use of technology

If technology is used in the polling station, the EMB shall ensure that its staff is properly trained in the use of that technology, and such technology shall be simple to use and understandable to all voters, who shall be appraised of the technology during voter education.

PART XVI: POLLING

74. Early Polling

- (1) Where necessary the EMB shall put in place mechanisms to ensure that election officers and security sector agents who will be working on election day(s) are given an opportunity to vote early either by postal ballot or at their places of deployment;
- (2) The EMB shall ensure safe storage and transmission of the early and postal votes;
- (3) The elderly, the sick, expectant mothers and people living with disabilities may also be given an opportunity to vote early either by postal ballot or at facilities where they are located at the time to be decided by the EMB.

75. Polling day(s) to be declared public holiday(s)

- (1) The date(s) designated to be polling day(s) shall be declared as public holidays to allow eligible and registered voters to cast their votes.
- (2) It shall constitute a statutory offence for an employer to require employees to be present at work on such designated day(s), or to penalise in any way employees who absent themselves from work on this day or on these days. This provision does not apply to essential services personnel as the electoral law allows for them to vote in advance.

76. Security agents

- (1) The State shall ensure that at each polling station, there is an adequate number of law enforcement officials to maintain the peace and ensure safety of voters, Election Officers, members of the media, election agents and election observers.
- (2) The Government shall ensure that there is an adequate number of security agents to maintain the peace and ensure safety of voters, Election Officers, members of the media, election agents and election observers and monitors.
- (3) Security agents:-
 - (a) shall be subject to the Code of Conduct on elections and shall remain in regular contact with the EMB on how security should be provided to the electoral process.
 - (b) shall act impartially and professionally, and shall at all times desist from acting with bias or malice towards candidates, political parties, media and voters.
 - (c) shall have the powers to arrest any individual who is in violation of the law, or who is disrupting the voting processes in any manner, provided that if such arrest within a polling station is carried out with the sanctioned permission of the Presiding Officer and it follows due process and be in accordance with the law.
 - (d) shall not harass, intimidate or otherwise seek to control or influence Election Officers, election agents, election observers, members of the media, and voters.
 - (e) shall not be present inside polling stations unless when required by Presiding Officers to enforce the law.

77. Opening and closing of polling stations

- (1) Polling stations shall be open and closed at the prescribed time.
- (2) When it is time to close the polling station and there are still voters waiting in the queue, the Presiding Officer shall with the

assistance of the security agents, mark the last voter at the queue at closing to be the last voter that will be allowed to vote. All the voters who are in the queue at the time of closing shall be allowed to vote.

- (3) Where a decision to extend the polling is made by the EMB, the Presiding Officer at the affected polling station, election agents representing the candidates at the polling station, and the head of the security agents officially deployed to provide security at the station shall sign a prescribed form to this effect.
- (4) Extension of polling days may only be announced by the EMB where it is necessary to do so under the circumstances prescribed by law or due to other unavoidable circumstances.
- (5) The extension in (4) above shall be considerate to marginalised groups in terms of their security and time needed to get to polling stations.
- (6) Should the EMB refuse to extend polling time or days despite circumstances referred to in (4) above, the Electoral Court or relevant statutory body may grant an extension of voting time or days.

78. Secrecy

- (1) The right of eligible individuals to vote unimpeded and the right to secrecy of the ballot shall be protected. The secrecy of the ballot shall be maintained throughout the entire electoral process.
- (2) Voting shall be by secret ballot so that ballots cannot be linked with voters who cast them and voters can cast their ballot without fear of intimidation.
- (3) The EMB shall in consultation with all key electoral stakeholders decide on the appropriate ballot type to be used for an election. The types of ballot boxes may include metal, wooden, transparent and opaque ballot boxes.

79. Electronic voting

- (1) Where e-voting is utilized, the EMB shall ensure that: -
 - (a) suitable safeguards against manipulation or interference in the e-voting process are in place;
 - (b) suitable voter education on the use of electronic equipment and the e-voting process takes place during the pre-election phase;
 - (c) electoral staff are satisfactorily trained to make use of the electoral system, and sufficient technical assistance is available at all times; and
 - (d) equipment and systems allow for effective and credible observation to take place and guarantees secrecy of the vote;

- (e) Adequate procedures are in place to secure and safeguard the electronic data; and
- (2) There shall be auditable paper trails and alternatives or safeguards put in place to complement e-voting system and to provide back-up to the electronic system in case of contingencies.

80. Assisted Voters

- (1) Those who are unable to vote on their own may be assisted by individuals prescribed in the law. People can only be assisted to vote if they self-declare inability to vote on their own, and if they request for such assistance.
- (2) Individuals may seek voter assistance on account of disability, illiteracy, or incapacitating illness.
- (3) Assistance shall be provided impartially without compromising the secrecy of the ballot.
- (4) The EMB shall keep and tally the statistics of all assisted voters, at polling stations, wards, constituencies and national levels, and shall release this information during announcement of polling results.

81. Media access to polling stations

The media shall be granted access to polling stations for purposes of reporting. There shall be no restrictions regarding video and audio recording of proceedings at any polling station, provided that no recording shall be made of proceedings in the voting booths to maintain secrecy.

PART XVII: VOTE COUNTING, TALLYING AND ANNOUNCEMENT OF RESULTS

82. Polling station results

- (1) Verification and reconciliation of ballots should be done before counting begins and this should be done by the Presiding Officer, the Election Officers deployed to the polling station, election observers and candidates or their agents.
- (2) In the event of a long lapse of time between the completion of voting and the commencement of the counting, the ballot boxes should be sealed and opened by the presiding officer in the presence of all election agents.
- (3) The counting of votes should be done at the polling station where the candidates and/or their election agents and election observers are present. Candidates and agents should be allowed to remain with the boxes from closure of polling station to counting of the votes.

- (4) Vote counting procedures and processes shall be clear and simple to avert opportunities for manipulation of results.
- (5) All accredited stakeholders shall be allowed to be present during the counting process and be issued with official results certificates at the end, signed by returning officers and confirmed by candidates' agents.
- (6) At the close of voting and counting at each polling station, results of that polling station shall be posted outside the polling station building for voters and members of the public to see.
- (7) There should be immediate release of polling station official election results on completion of counting, signed by returning officers and confirmed by candidates' agents.
- (8) Parallel Voter Tabulation (PVT) may be conducted in consultation and with the expressed permission of the EMB.

83. Ward results

At the close of voting and counting of the votes cast at all polling stations in a ward, the computed results of the ward shall be posted outside the building or structure of the ward tallying centre for voters, candidates, media, election observers and members of the public to see.

84. Constituency results

At the close of voting and counting of the votes cast at all polling stations in a constituency, the computed results of the ward shall be posted outside the main building of the constituency tallying centre for voters, members of the public, the media and observers to see. This should be done for all the elections results handled at that level.

85. Vote tallying and announcement of results

- (1) Results shall be announced at the earliest instance that they become available.
- (2) The EMB shall announce constituency results as soon as they become available, and in any case, not more than 2 days after polling closes.
- (3) The EMB shall announce final national results at the earliest possible time after the close of polling, and in any case, not more than 5 days after polling closes.
- (4) Election observers and monitors shall be allowed to observe and monitor all vote counting and tallying.

86. Spoiled and rejected ballots

All Spoiled and rejected ballots shall be tallied at polling station, ward, constituency and national levels, and the information released during

announcement of polling results.

87. Final results

Results announced by the EMB having followed due process prescribed in the electoral law shall be the final result of poll, unless challenged and set aside by a competent court of law upon application by aggrieved candidates or political parties.

88. Acceptance of results by candidates and political parties

- (1) The culture of accepting election results shall be cultivated and encouraged.
- (2) Candidates and political parties shall accept and respect election results, which have been declared to be credible free and fair by the EMB, Election Observers and competent authorities such as the courts of law.
- (3) Political parties and candidates contesting elections shall accept defeat after fair contests.
- (4) There shall be acceptance and respect of the election results as provided for in the law of the land.
- (5) The electoral outcome reflect the will of the people and the outcome shall be given effect by the institutions of Government.

**PART XVIII: ELECTORAL DISPUTES RESOLUTION
MECHANISMS**

89. Electoral Dispute Resolution mechanism

- (1) The Constitution, electoral laws and other applicable legislation shall provide a framework for the prevention, management and peaceful resolution of election-related disputes.
- (2) The various structures for the resolution of election dispute which states can adopt may include-
 - (a) Alternative Dispute Resolution (ADR)
 - (b) Electoral Tribunal;
 - (c) Electoral Court.

90. Alternative Dispute Resolution

States shall provide for the establishment of ADR structures which may include the following;

- (a) Multiparty Liaison Committees
- (b) Conflict management Panels
- (c) Media Monitoring Committees

91. Judicial Mechanisms

States shall provide for the establishment of judicial mechanisms which includes-

- (1) An electoral Tribunal;
- (2) An Electoral Court;

92. Electoral Tribunal

- (1) There shall be an Electoral Tribunal set up by the competent authority as prescribed in the electoral law to receive and hear election complaints and objections relating to the code of conduct or election procedures.
- (2) The Electoral Tribunal shall be made up of a specified number of members and appointed through a procedure that shall be determined and specified by the electoral law and published regulations.
- (3) The procedures for the lodging of complaints and disputes shall be simple, transparent and widely known by the public.
- (4) The Tribunal shall deal with transgressions of the electoral Codes of Conduct impartially and in timely fashion.
- (5) The time limits within which the Election Tribunal shall hear and dispose of matters shall be stipulated by law.
- (6) Resolutions shall be offered in time for appropriate remedies to be enacted with respect for the electoral timeline.
- (7) Matters before the Electoral Tribunal shall lie for appeal to the Electoral Court.

93. Electoral Court

- (1) An Electoral Court shall be established by law to hear and determine election disputes.
- (2) The Electoral Court and all other Courts to hear and determine electoral disputes shall be independent and impartial, and shall accord fair and public hearing. The independence and impartiality of the Courts shall be guaranteed and protected by the Constitution.
- (3) The Electoral Court shall have the equivalent status to a High Court or Courts of similar jurisdiction.
- (4) The Electoral Court shall hear and determine election-related disputes, and shall be the forum for the enforcement of electoral laws and Codes of Conduct.
- (5) The Electoral Court shall have the powers to order a recount of the ballots, extension of polling period or re-election as the case may be.

- (6) The Electoral Court shall have the power to stipulate its own procedures subject to the law and the Constitution.
- (7) Application for interdicts shall be made to the Electoral Court at first instance without the requirement that recourse be first sought with the Electoral Tribunal.
- (8) Matters decided by the Electoral Court are subject to appeal within the normal hierarchy of Courts, subject to the requirement that such appeal Courts shall dispose of electoral appeals within the time limits provided by law.
- (9) The EMB shall dispose of the election residue in accordance with the law.

94. Right to an effective remedy before the Electoral Court

- (1) Electoral disputes before the Electoral Court shall be decided expeditiously, with due regard to urgency and sensitivity of the matters, and according to time limits which shall be set in an Act of Parliament.
- (2) Resolutions shall be offered in time for appropriate remedies to be enacted with respect for the electoral timeline.
- (3) The Electoral Court shall have the powers to order a recount of ballots, extension of polling period or re-election, as the case may be.
- (4) Penalties for breach of electoral laws and Codes of Conduct shall be prescribed in the Electoral Act. This shall include investigation of alleged violations, cessation of those violations if they are ongoing, and steps to prevent their recurrence.

PART XIX: MISCELLANEOUS

95. Traditional and religious leaders

- (1) Traditional and religious leaders shall not in their capacity as such, have any role in the management and direction of the electoral process in any way.
- (2) No traditional and religious leader shall unduly influence their subject or otherwise influence in any way the exercise of suffrage by anyone under their authority.
- (3) Violation of this provision shall constitute an offence whose penalty shall be prescribed by Parliament.

96. Report on elections

- (1) At the end of each election or by-election, the EMB shall submit to Parliament -
 - (a) in the case of an election, a report within 6 months
 - (b) in the case of a by-election, a report within 3 months of the election having taken place.
- (2) The EMB shall also cause for publication of its election reports on its website in a user-friendly format for access by the public.

97. Translation into local languages

The State shall ensure that the electoral law is translated and made available in at least all official languages of the country.

98. Post-Election Review

The EMB shall ensure that a post-election review for local, parliamentary and presidential elections is held at the end of every election. Such a review shall be attended by all key electoral stakeholders.



SADC MODEL LAW ON ELECTIONS

